

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS,  
EASTERN DIVISION**

ROBERT L. NICHOLLS, and GWENDOLYN  
A. HOGAN-NICHOLLS, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

EMC MORTGAGE CORPORATION, and  
DOES 1 through 10 inclusive,

Defendant.

Civil Action No. 11-cv-12303-PBS

**NOTICE OF AMENDED SETTLEMENT AGREEMENT AND REQUEST FOR  
PRELIMINARY APPROVAL**

**TO THE COURT, DEFENDANT AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that the pursuant to the Court's request the parties are submitting an amended settlement agreement and requesting preliminary approval as Exhibit 1.

**Defendant's Note to the Court clarifying facts related to the amended settlement agreement:**

EMC clarifies that it did not intend to suggest to this Court that there are class members who have been "foreclosed upon as a result of unpaid late fees." (Dkt. 107, 10/16/13 Order.) EMC was simply making the point if a class member is foreclosed upon (for reasons unrelated to the issues in this case, i.e., the failure to make loan payments), there may no longer be any late fee balance to waive on the account in connection with the settlement in this case. That said, to address the Court's concern with the minimum payment (which was intended to ensure a benefit to those persons who do not otherwise receive a monetary award or waiver award), the parties have agreed to take the minimum payment provision out of the settlement. The parties have

further agreed to exclude from the class those persons who EMC can conclusively identify prior to class notice as not being entitled to a monetary award or a waiver award. Also, if there are any persons who receive the class notice, but who ultimately do not receive the benefit of a monetary award or a waiver award as described in the Amended Settlement Agreement, those persons will not be subject to the release provisions in the Amended Settlement Agreement.

Dated: November 8, 2013

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